



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Uniform Issue List: 408.03-00

JUN 6 2011

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T:EP: RA: T2

Legend:

Taxpayer A	=	###
Taxpayer B	=	###
IRA W	=	### ###
IRA X	=	### ###
IRA Y	=	### ###
IRA Z	=	### ###
Financial Institution A	=	###
Financial Institution B	=	###
Amount 1	=	###
Amount 2	=	###
Date 1	=	###

###

Page 2

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Date 2 = ###

Date 3 = ###

Dear ###:

This is in response to your request dated August 10, 2010, as supplemented with correspondence dated November 22, 2010 and February 25, 2011, in which you request a waiver of the 60-day rollover period contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age represents that on Date 1, she received a distribution of Amount 1 from IRA W. Taxpayer B, age represents that on Date 2, he received a distribution of Amount 2 from IRA X. Taxpayers A and B assert that their failure to accomplish a rollover within the 60-day period prescribed by section 408(d) of the Code was due to a debilitating medical condition. Taxpayers A and B assert that Amount 1 and Amount 2 have not been used for any purpose.

Taxpayer A represents that she was the owner of IRA W, an individual retirement arrangement maintained at Financial Institution A on her behalf. Taxpayer B represents that he was the owner of IRA X, an individual retirement arrangement maintained at Financial Institution A on his behalf. Taxpayer A represents that on Date 1, she received a distribution of Amount 1 from IRA W with the intent of rolling it over into another IRA at Financial Institution B. Taxpayer B represents that on Date 2 he received a distribution of Amount 2 from IRA X with the intent of rolling it over into another IRA at Financial Institution B. On Date 3, Taxpayer A was stricken with a debilitating bacterial infection necessitating visits to physicians on several occasions just prior to the end of the 60-day rollover period and several days after the rollover period ended. Taxpayer B represents that he was the primary caregiver for Taxpayer A and was preoccupied with her care and transporting her to visits with physicians during the 60-day rollover period, and was therefore unable to complete the rollover within the 60-day period. On Date 4, less than a week after the end of the 60-day rollover periods for Amount 1 and Amount 2, Taxpayer A and Taxpayer B deposited Amount 1 and Amount 2 in IRA Y and IRA Z respectively, with each account established with the intent of qualifying as an IRA under section 408 of the Code.

Based on the facts and representations, Taxpayer A and Taxpayer B request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 and Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross

income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and submitted by the taxpayers, including but not limited to a documented physician's opinion, is consistent with the assertion that their inability to complete timely rollovers was due to the medical incapacity of Taxpayer A and Taxpayer B's preoccupation with her care.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA W and Amount 2 from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 1 and Amount 2, which were deposited into IRA Y and IRA Z respectively, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, contact ### at ###. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: ###

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